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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214649
Party	Defendant Benny Hodge
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Submission	Other Motions/Papers
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Date	09/24/2015
Attachments	oppose summary judgement.pdf(445221 bytes) BENNY HUNNA INITIAL DISCLOSURES (1).pdf(896650 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: BENNY HUNNA

Serial No: 85/920,599

Filing Date: May 01, 2013

NOODLE TIME, INC. vs. BENNY HODGE

Opposition No. 91214649

**OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY
JUDGEMENT**

Pursuant to Rule 56 of Federal Rules of Civil Procedure and Trademark Rule 2.116 and 2.127, Applicant, Benny Hodge hereby respectfully opposes Opposer's Motion for Summary Judgement against Applicant, Benny Hodge for Opposition No. 91214649 DENYING that the mark BENNY HUNNA, subject of U.S. Application Serial No. 85/920,559 (the "Subject Application"), filed in the name of Benny Hodge, is likely to cause confusion, mistake, or deception as to source, sponsorship, or affiliation with Opposer's BENIHANA Marks and (ii) Applicant's BENNY HUNNA Mark will dilute the distinctive quality of Opposer's BENIHANA Marks.

HOW APPLICANT LEARNED OF OPPOSER'S MARK

Applicant learned of Benihana Restaurant in June of 2013. Applicant's wife told him about the restaurant in Memphis, Tn and the Applicant, Benny Hodge, and his wife Marqueish Hodge went on or about June 7, 2013 for Applicant's birthday which is June 10th. While at the restaurant Applicant talked to the who he was told was the manager. While talking to the manager Applicant showed the manager his Youtube page and asked if he could do a video in the restaurant and he said yes. When we were finished eating we took pictures. The picture of Applicant and manager is in Attachment 1. According to Declaration of Elizabeth Jean Means No. 24, Applicant sent an email on June 21, 2013 through www.benihana.com. Before viewing the website Applicant was under the impression that the Memphis restaurant was the only one. After finding out there were more than one restaurant the verbal agreement between the manager of the Memphis restaurant prompted Applicant to send the email in Declaration of Elizabeth Jean Means No. 24. Subject Mark, BENNY HUNNA, filing date is May 1, 2013. Application was filed before Applicant learned of Benihana Restaurants or anything pertaining to

Opposer or Opposer's Mark and said email was prompted by a verbal agreement made by Applicant and Benihana Restaurants employee/manager.

DIFFERENCES IN SUBJECT MARK, BENNY HUNNA, AND OPPOSER'S MARK, BENIHANA

Applicant's Mark differs from Opposer's Mark in sight sound and meaning. By sight it is obvious that the words are different. Subject Mark, BENNY HUNNA, is two words consisting of Applicants birth name/given name/personal name/first name and Hunna an entertainment term that means 100 (see Attachment 2 Initial Disclosures). Opposer's Mark, BENIHANA, is one word of Japanese origin meaning red flower. BENNY HUNNA and BENIHANA do not meet foreign equivalents because BENNY HUNNA is not a red flower or does not mean red flower. BENNY HUNNA and BENIHANA are NOT pronounced the same. Opposer's one and only witness that is giving testimony is Elizabeth Jean Means, Vice President of Marketing for Benihana Inc. Elizabeth Jean Means is not an expert in Japanese language or speaking. BENNY HUNNA is pronounced in English. If BENIHANA is pronounced in English then this word would fall under the "vowel consonant vowel" rule. The "vowel consonant vowel" rule states that the second vowel will make the first vowel sound like it's name. For example, B-E-N-I-H-A-N-A, the I would make the E make the E sound and the A would make the A make the A sound. Just because words can be easily mispronounced does not constitute "likelihood of confusion or dilution". Opposer has failed to produce an expert in the Japanese language to pronounce BENIHANA to even know how Opposer's mark is properly pronounced in the foreign language. Subject Mark and Opposer's mark, BENNY HUNNA and BENIHANA, differ in sight sound and meaning.

MEAD DATA CENTRAL, INC. VS. TOYOTA MOTOR SALES, U.S.A., INC. 875 F.2D 1026 (2D CIR. 1989)

Mead Data Central, Inc. vs. Toyota Motor Sales, U.S.A., Inc. 8875 F.2d 1026 (2d cir. 1989) is a SIMILAR trademark case about pronunciation involving the marks LEXIS, a computer software, and LEXUS, the name of an automobile made by Toyota. The courts found that even though the marks are virtually identical besides one letter, the I in LEXIS and the U in LEXUS, and 'in everyday spoken English, LEXIS and LEXUS are virtually identical in pronunciation" if the words were pronounced correctly they would not sound the same.

<https://cyber.law.harvard.edu/metaschool/fisher/domain/tmcases/mead.htm> This would be the same in Opposition No. 91214649. If Subject Mark and Opposer's Mark where pronounced correctly they would not sound the same.

DILUTION AND LIKELIHOOD OF CONFUSION DOES NOT EXIST IN THE SUBJECT MARK AND OPPOSER'S MARK

Applicant and Opposer agree that likelihood of confusion does not exist. In the DECLARATION OF ELIZABETH JEAN MEANS NUMBER 31 she states, “ Benihana is not aware of any actual instances of confusion involving, BENNY HUNNA, but it is Benihana’s understanding that the Subject Application is based on an intent-to-use the mark in the future.” BENNY HUNNA is a living individual, a person, the Subject Mark and Opposer’s Mark can not be used in the same context. The Opposer’s Mark is a place, a restaurant, the marks can not be used to even confuse the public. Subject Mark is Applicant’s stage name and almost always will have his name presented in sight with his services, which Subject Mark and Opposer’s Mark are obviously different in sight. In the DECLARATION OF ELIZABETH JEAN MEANS NUMBER 74 she states, “ I have personally reviewed Benny Hunna’s music videos on Youtube, which include inappropriate content – from profanity to smoking and gambling. Benihana is a family-oriented restaurant and is concerned that such connection to the BENIHANA® MARK would tarnish the brand’s reputation, which it has taken decades to build.” In the DECLARATION OF ELIZABETH JEAN MEANS NUMBER 55 she states, “Most recently, BENIHANA® was featured in the 2013 movie “Wolf of Wall Street,” an award winning film starring actor Leonardo DiCaprio and directed by Martin Scorsese. According to IMDB the film generated \$18 million its opening weekend.” It is true that the “Wolf of Wall Street” is an “award winning film” it holds the Guinness Worlds Record title for the most swearing in one film, using the “f-word” (fuck) 506 times in 180 minutes. Movie director, Martin Scorsese, mentioned in the DECLARATION OF ELIZABETH JEAN MEANS NUMBER 55, broke “ his own record - Vegas gangster epic Casino (1995) was a record breaking swear-fest at the time of release, containing 422 uses of the f-bomb (including in the narration) - 2.4 times per minute.” Mr. Scorsese is known for this type of profanity in his movies evidently <http://www.guinnessworldrecords.com/news/2014/1/how-the-wolf-of-wall-street-broke-movie-swearing-record-54478/>. The Huffington Post reports, “If you’ve braved the box office crowds to catch a screening of “The Wolf of Wall Street,” you were met with three hours of booze, drugs, hookers, drugs, orgies, drugs, money falling from the sky (sometimes literally) and more drugs.” http://www.huffingtonpost.com/2013/12/31/leonardo-dicaprio-jonah-hill-high_n_4524632.html Benihana openly admits to association with this film which is even more inappropriate than what Elizabeth Jean Means claims Benny Hunna’s music videos on Youtube to be. There is no way BENNY HUNNA can tarnish the reputation of Benihana if a Guinness World Record title, for saying the “f-word” (fuck), holding film could not tarnish. In fact the scene when BENIHANA® was mentioned by name and trademark said, “ BENIHANA, BENI FUCKING HANA” <https://www.youtube.com/watch?v=JhIUWBhICa4>. The “f-word” is not the only profanity used in this film. Sexually explicit and other vulgar terms were used all throughout the entire movie https://www.youtube.com/watch?v=j8lx7v_O_Ms. The BENIHANA® trademark also appears in the movie “40 Year Old Virgin”. In the DECLARATION OF ELIZABETH JEAN MEANS she states, “ The BENIHANA® Marks also made an appearance in the 2005 comedy film “The 40 Year Old Virgin.” A BENIHANA® restaurant provided the location for the main character’s first date, played by popular actor Steve Carrell. The film was a huge success, and grossed \$21 million during its opening weekend. Overall, the movie grossed \$174 million at the box office, placing it as 25th in global and 19th in U.S. revenues for 2005.” Benihana, the “family-oriented restaurant and is concerned that such connection to the BENIHANA® MARK would tarnish the brand’s reputation, which it has taken decades to build,” as stated in the DECLARATION OF ELIZABETH JEAN MEANS NUMBER 74, is also associating themselves with another sexually explicit, drug using , and profane language filled film which

they claim to be the concern they have with the BENNY HUNNA mark that does not exhibit nearly half of the behavior that the BENIHANA® TRADEMARKS openly endorse and associate themselves with. The examples of Sex and Nudity in "The 40 Year Old Virgin" are "A man calls a company and asks how to get rid of an erection." "A man walks around in boxers with a visible erection." "Female breast and male butts are shown." The examples of Profanity in "The 40 Year Old Virgin" are "60+ times fuck and its derivatives, 65 sexual references, some strong, 25 scatological terms, 61 anatomical terms, 19 mild obscenities, shit, piss..., 10 derogatory terms for African-Americans (some also referring to Indians), 3 religious profanities, 28 religious exclamations." <http://www.imdb.com/title/tt0405422/parentalguide> Subject Mark can not dilute Opposer's Mark by tarnishment or blurring. BENNY HUNNA and BENIHANA are not highly similar, identical or virtually identical which the requirement for dilution by blurring. BENNY HUNNA can not tarnish BENIHANA because of Opposer's Marks open association and/or endorsement of inappropriate behavior, sexual content, world record breaking profanity, and drug use in films and movies they are a part of.

CONCLUSION

Applicant and Opposer agree that there is no confusion in the Subject Mark and Opposers Marks. BENNY HUNNA differs in sight, sound, and meaning to the Opposer's Mark. Opposer's has failed to give present a Japanese expert to pronounce the Japanese word, when pronounced by the "vowel consonant vowel rule", and/or correctly is not the same as Subject Mark as proven by Applicant. Opposer's remarks of a family oriented restaurant are tarnished by an open association with world record setting profanity, boarder line pornography as to the sexual content of the movies they openly endorse or associate with, and drug use in movies that seem to glorify addiction. My prayer of relief is that the Board, respectfully, DENY OPPOSER'S MOTION FOR SUMMARY JUDGEMENT in full. Also to narrow the scope in this proceeding due to Applicant and Opposer's commonality of no confusion in the Subject Mark and Opposer's Mark.

DATE: SEPTEMBER 23,2015

X BENNY HODGE

Benny Hodge
Defendant

Benny Hodge

122 Country Club Dr.

Greenwood, Ms 38930

Tel: (662)897-8525

E-mail: bennyhodge25@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing OPPOSITION TO OPPOSER'S MOTION TO SUMMARY JUDGEMENT has been served on Opposers in the following manner:

By E-Mail

Janet C. Moreira

MAVEN INTELLECTUAL PROPERTY

5801 Biscayne Blvd.

Miami, Florida 33137

janet@maveniplaw.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: BENNY HUNNA

Serial No: 85/920,599

Filing Date: May 01, 2013

NOODLE TIME, INC. vs. BENNY HODGE

Opposition No. 91214649

APPLICANT'S RULE 26(A)(1) INITIAL DISCLOSURES

Applicant, Benny Hodge, an individual, hereby submits its initial disclosures as required by Rule 26(a)(1) of Federal Rules of Civil Procedures 37 C.F.R. 2.120(a)(1).

In accordance with Rule 26(a)(1)(A), the following is a list of persons who are likely to have discoverable non-privileged information that Applicant may use to support its claims and defense.

1. ABC NEWS
47 W 66TH ST (btwn Columbus Ave. & CPW)
New York, NY 10023
(212)456-2700

Subject of information: AN ARTICLE ON ABC NEWS WEBSITE, (URL)
<http://abcnews.go.com/US/chicagos-gang-violence-fueled-social-media/story?id=17464743>,
written by Lauren Effron and Kinga Janik via NIGHTLINE on Oct. 19, 2012, reports that
"3HUNNA" is the same as 300.

2. INTERSCOPE RECORDS
2220 Colorado Ave.
Santa Monica, CA 90404
(310)865-1000

Subject of information: 3Hunna appears in Finally Rich recorded by Chief Keef on Interscope Records, no. 1783802, 12/18/2012. 3Hunna copyright registration number/date: PA0001839368/2013-05-15. The copyright information is available on (URL)
<http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?vi=2&ti=1,2&Search%5FArg=3HUNNA&Search%5FCode=TALL&CNT=25&PID=UpytWHuunzecfoBzbO-cmuyMLs8j&SEQ=20140503162228&SID=1>

In accordance to Rule 26(a)(1)(b), the following is a list of documents that are likely to have discoverable non-privileged information that Applicant may use to support its claim and defense.

1. Birth certificate of Benny Hodge shown in Exhibit 1.

Location: Benny Hodge
122 Country Club Dr.
Greenwood, MS 38930
(662)897-8525

2. Copyright registration of 3Hunna by Chief Keef on Interscope Records.

Location: (URL) <http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?vi=2&ti=1,2&Search%5FArg=3HUNNA&Search%5FCode=TALL&CNT=25&PID=UpytWHuunzecfoBzbO-cmuyMLs8j&SEQ=20140503162228&SID=1>

2. What is 3hunna on Ask.com confirms Hunna means hundred.

Location: (URL) <http://www.ask.com/web?q=what+is+3hunna&qsrc=0&o=2746&l=dir&qo=homepageSearchBox>

Dated: May 7, 2014

X Benny Hodge

Benny Hodge
Defendant

Benny Hodge

122 Country Club Dr.

Greenwood, Ms 38930

Tel: (662)897-8525

E-mail: bennyhodge25@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Defendant Rule 26(a)(!) Initial Disclosure has been served on Opposers in the following manner:

By E-Mail

Janet C. Moreira

MAVEN INTELLECTUAL PROPERTY

5801 Biscayne Blvd.

Miami, Florida 33137

janet@maveniplaw.com

EXHIBIT 1

STATE OF FLORIDA

OFFICE of VITAL STATISTICS

CERTIFICATE OF LIVE BIRTH
FLORIDA 109

LOCAL FILE NO. 87-1436		DATE OF BIRTH (Mo., Day, Year)		HOUR	
CHILD'S NAME FIRST Benny MIDDLE Hodge LAST Hodge		SEX Male	June 10, 1987		11:50a
HOSPITAL NAME (If not in hospital, give street and number) Tallahassee Mem. Reg. Med. Center		CITY-TOWN OR LOCATION OF BIRTH Tallahassee		COUNTY OF BIRTH Leon	
CERTIFY that the state information concerning this child is true to the best of my knowledge and belief.		DATE SIGNED (Mo., Day, Year) June 11, 1987		NAME AND TITLE OF ATTENDANT AT BIRTH (If other than certifier, type or print) A. S. Clements, M.D.	
SIGNATURE OF CERTIFIER Pat Denham, Ass't Dir. of Med. Records		MAILING ADDRESS (Street or P.O. No., City or Town, State, Zip) T.M.R.M.C., Tallahassee, Florida			
REGISTRAR Daphne W. Allen, CRR		DATE RECEIVED BY REGISTRAR (Mo., Day, Year) June 15, 1987			
MOTHER'S MAIDEN NAME FIRST Viranda MIDDLE Richards LAST Richards		AGE at time of this birth (Years, Months, Days) 30	STATE OF BIRTH (If born in U.S.A., name county) Georgia		
RESIDENCE - STATE Florida		COUNTY Leon	CITY-TOWN OR LOCATION Tallahassee	STREET AND NUMBER OF RESIDENCE 635 Okaloosa St.	
MOTHER'S MAILING ADDRESS (If same as above, enter "See Code Only") 32304		APARTMENT NO. 1		INSIDE CITY LIMITS (Yes or No) Yes	
FATHER'S NAME FIRST Sheldon MIDDLE Hodge LAST Hodge		AGE at time of this birth (Years, Months, Days) 31	STATE OF BIRTH (If born in U.S.A., name county) Florida		
CERTIFY that the personal information provided on this certificate is correct to the best of my knowledge and belief.		SOCIAL SECURITY NUMBER 254-98-4174		DATE WHEN 263-19-7693	
SIGNATURE OF FATHER Sheldon Hodge					

INFORMATION FOR MEDICAL AND HEALTH USE ONLY

CERTIFIED COPY

THIS IS A CERTIFIED TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE

BY

Kelma Phawey
*July 13, 1987*OLIVER H. BOORDE
State Registrar
Office of Vital Statistics

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CERTIFICATION OF VITAL RECORD



